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KELLY K. KORDZIK
WINSTEAD SECHREST & MINICK PC
PO BOX 50784
DALLAS, TX 75201

| EXAMINER | |
|---|---|
| PYZOCHA, MICHAEL J | |

| ART UNIT | PAPER NUMBER |
|---|---|
| 2137 | |

DATE MAILED: 10/03/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

| Office Action Summary | Application No. | Applicant(s) | |
|---|---|---|---|
| | 10/016,792 | CHALLENER, DAVID CARROLL | |
| | Examiner | Art Unit | |
| | Michael Pyzocha | 2137 | |

*-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --*

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1)☒ Responsive to communication(s) filed on *06 September 2005*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

4)☒ Claim(s) *1-24* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-24* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

**Application Papers**

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

**DETAILED ACTION**

1. Claims 1-24 are pending.

2. Amendment filed 09/06/2005 has been received and considered.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

4. Claims 1-4, 6-9, 11-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pezzillo et al (US 6434621), further in view of Glick et al (US 20020051540) and further in view of Schneier (Applied Cryptography).

As per claims 1, 6 and 11, Pezzillo et al discloses encoding a radio broadcast into digital packets of information; transmitting said digital packets of information over the Internet (see column 5 lines 60-67).

Pezzillo et al fails to disclose encrypting the packets to restrict access to a defined distribution area and broadcasting the decryption key to the defined area.

However, Glick et al teaches encrypting packets to restrict access to a defined distribution area (see paragraphs 119 and 122) and Schneier teaches broadcasting a key (see page 523).

At the time of the invention it would have been obvious to a person of ordinary skill in the art to use Glick et al's method of restriction access to a specific location using encryption and Schneier's method of broadcasting a key in Pezzillo et al's Internet radio broadcasting system.

Motivation to do so would have been to allow anyone in a defined geographic area to decrypt the information (see paragraph 119) and to share the decryption key with the users (see page 523).

As per claims 2, 7, and 12, the modified Pezzillo et al, Glick et al and Schneier system discloses receiving said decryption key by one or more users of computer systems located approximately within said defined distribution area of said broadcaster (see page 523 as modified by Glick et al).

As per claims 3, 8, and 13, the modified Pezzillo et al, Glick et al and Schneier system discloses decrypting said

encrypted digital packets of information using said decryption key (see Glick et al paragraph 119).

As per claims 4, 9, and 14, the modified Pezzillo et al, Glick et al and Schneier system fails to disclose reproducing said decrypted digital broadcast by an audio transducer. However, Official Notice is taken that at the time of the invention it would have been obvious to a person of ordinary skill in the art to use an audio transducer to reproduce the digital broadcast. Motivation to do so would have been to allow the receiver to hear the digital broadcast.

5. Claims 5, 10, and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over the modified Pezzillo et al, Glick et al and Schneier system as applied to claims 1, 6, and 11 above, and further in view of Kelly et al (US 20030050015).

As per claims 5, 10, and 15, the modified Pezzillo et al, Glick et al and Schneier system fails to disclose the key is broadcast using electromagnetic waves.

However, Kelly et al teaches the use electromagnetic waves (see paragraph 270).

At the time of the invention it would have been obvious to a person of ordinary skill in the art to use Kelly et al's electromagnetic waves to broadcast the key of the modified Pezzillo et al, Glick et al and Schneier system.

Motivation to do so would have been to allow the use of RF or IR data communications (see paragraph 270).

6. Claims 16, 18-19, 21-22 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pezzillo et al and further in view of Glick et al.

As per claims 16, 18-19, 21-22 and 24, Pezzillo et al discloses and transmitting a broadcast over the Internet (see column 5 lines 60-67).

Pezzillo et al fails to disclose receiving a request to transmit said broadcast from a requester; determining an approximate physical location of said requester; and transmitting (not transmitting) if said requester is (isn't) physically located approximately within said defined distribution area.

However, Glick et al teaches these limitations (see paragraphs 61, 119 and 121-122).

At the time of the invention it would have been obvious to a person of ordinary skill in the art to use Glick et al's method of to use Glick et al's method of restriction access to a specific location in Pezzillo et al's Internet radio broadcasting system.

Motivation to do so would have been to allow anyone in a defined geographic area to obtain the information (see paragraph 119).

7. Claims 17, 20 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over the modified Pezzillo et al and Glick et al system as applied to claims 16, 19 and 22 above, and further in view of Schlossberg et al (US 20020066034).

As per claims 17, 20 and 23, the modified Pezzillo et al and Glick et al system fails to disclose the step of determining said approximate physical location of said requester comprises the steps of: capturing an Internet Protocol of said requester; converting said captured Internet Protocol of said requester into a computer name; and performing a trace of said request.

However, Schlossberg et al teaches these limitations (see paragraph 54).

At the time of the invention it would have been obvious to a person of ordinary skill in the art to use Schlossberg et al's method of tracing to determine the location in the modified Pezzillo et al and Glick et al system.

Motivation to do so would have been to determine the physical location of a device on the Internet (see paragraph 54).

8. Claims 1-16, 18-19, 21-22 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over iCraveTV (CNN story) and further in view of Schneier.

As per claims 1-3, 5-8, 10-13 and 15, iCraveTV discloses a broadcast over the Internet by a broadcaster where the broadcast is interpreted by users located approximately within a defined distribution area of the broadcaster, comprising the steps of: encoding a radio broadcast into digital packets of information; transmitting said digital packets of information over the Internet (see pages 1-2 where TV is a radio broadcast which uses electromagnetic waves).

iCraveTV fails to disclose encrypting and decrypting using a broadcasted key.

However, Schneier teaches encrypting and decrypting using a broadcast key (see page 523).

At the time of the invention it would have been obvious to a person of ordinary skill in the art to use the cryptographic methods of Schneier to restrict access to the broadcast of iCraveTV.

Motivation to do so would have been to be able share the decryption key with specific users (see page 523).

As per claims 4, 9, and 14, the modified iCraveTV and Schneier system fails to disclose reproducing said decrypted

digital broadcast by an audio transducer. However, Official Notice is taken that at the time of the invention it would have been obvious to a person of ordinary skill in the art to use an audio transducer to reproduce the digital broadcast. Motivation to do so would have been to allow the receiver to hear the audio of the digital broadcasted TV.

As per claims 16, 18-19, 21-22 and 24, the modified iCraveTV and Schneier system discloses transmitting a broadcast over the Internet within a defined distribution area, comprising the steps of: receiving a request to transmit said broadcast from a requester; determining an approximate physical location of said requester; and transmitting (not transmitting) said broadcast over the Internet to said requester if said requester is (isn't) physically located approximately within said defined distribution area (see iCraveTV as applied above where it is inherent that the system must determine the physical location of the requestor to restrict the access within an area).

9. Claims 17, 20 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over the modified iCraveTV and Schneier system as applied to claims 16, 19 and 22 above, and further in view of Schlossberg et al (US 20020066034).

As per claims 17, 20 and 23, the modified iCraveTV and Schneier system fails to disclose the step of determining said

approximate physical location of said requester comprises the steps of: capturing an Internet Protocol of said requester; converting said captured Internet Protocol of said requester into a computer name; and performing a trace of said request.

However, Schlossberg et al teaches these limitations (see paragraph 54).

At the time of the invention it would have been obvious to a person of ordinary skill in the art to use Schlossberg et al's method of tracing to determine the location in the modified iCraveTV and Schneier system.

Motivation to do so would have been to determine the physical location of a device on the Internet (see paragraph 54).

***Response to Arguments***

10. Applicant's arguments filed 09/06/2005 have been fully considered but they are not persuasive. Applicant argues: the combination of Pezzillo, Glick and Schneier fails to disclose certain limitations; there is no motivation to combine Pezzillo, Glick and Schneier; the operation of Glick would change with the modifications; the combination of Pezzillo, Glick, Schneier, and Kelly fails to disclose certain limitations; there is no motivation to combine Pezzillo, Glick, Schneier, and Kelly; the

combination of Pezzillo and Glick fails to disclose certain limitations; there is no motivation to combine Pezzillo and Glick; there is no motivation to combine Pezzillo, Glick and Schlossberg; the combination of CNN and Schneier fails to disclose certain limitations; there is no motivation to combine CNN and Schneier; and there is no motivation to combine CNN, Schneier, and Schlossberg.

Regarding Applicant's argument that the combination of Pezzillo, Glick and Schneier fails to disclose providing a decryption key to a transmitter and receiving the key only if within a certain location, Pezzillo teaches transmitting information to clients who receive the data (see column 9 lines 1-15), and Schneier teaches broadcasting a key (see page 523), therefore the combination teaches transmitting and receiving a decryption key. The next modification is taking Glick's teaching of restricting access to information to only users within a physical area (as in paragraphs 119 and 122) and therefore the decryption key would only be available to those in certain physical locations. Applicant further challenged Examiner's use of Official Notice, as seen in the printout from FOLDOC a transducer converts and electrical signal into sound, i.e. makes an electrical signal hearable.

Regarding Applicant's argument that there is no motivation to combine Pezzillo, Glick and Schneier, as cited in the previous action and again above, the motivation to combine the teachings of Glick and Schneier with Pezzillo would have been to allow anyone in a defined geographic area to decrypt the information (see paragraph 119) and to share the decryption key with the users (see page 523). Applicant also argues that Glick teaches away from the combination, however, only Glick's teaching of encrypting packets to restrict access to a defined distribution area and not the specifics of the method.

Regarding Applicant's argument that the operation of Glick would change with the modifications, Pezzillo is being modified by the teachings of Glick and Schneier. Therefore Glick is not being modified so the operation cannot change.

Regarding Applicant's argument that the combination of Pezzillo, Glick, Schneier, and Kelly fails to disclose transmitting the decryption key over electromagnetic waves, the modified Pezzillo, Glick and Schneier system teaches transmitting the decryption key, and Kelly is solely relied upon for its teaching of transmitting data via electromagnetic waves. Therefore when the modified Pezzillo, Glick and Schneier system is further modified to include transmitting via electromagnetic waves, the decryption key is transmitted via these waves.

Regarding Applicant's argument that there is no motivation to combine Pezzillo, Glick, Schneier, and Kelly the motivation is to allow the use of either RF or IR data communications taught in paragraph 270 of Kelly.

Regarding Applicant's argument that the combination of Pezzillo and Glick fails to disclose, the modified Pezzillo and Glick system teaches sending (not sending) the data is a requestor is (isn't) within a geographical area as taught by Glick paragraphs 61, 119, and 121-122.

Regarding Applicant's argument that there is no motivation to combine Pezzillo and Glick, as cited in the previous action and again above, the motivation to combine the teachings of Glick with Pezzillo would have been to allow anyone in a defined geographic area to decrypt the information (see paragraph 119).

Regarding Applicant's argument that there is no motivation to combine Pezzillo, Glick and Schlossberg, the motivation to combine Schlossberg with Pezzillo and Glick would have been to determine the physical location of a device on the Internet (see paragraph 54).

Regarding Applicant's argument that the combination of CNN and Schneier fails to disclose providing a decryption key to a transmitter and receiving the key only if within a certain location, CNN teaches transmitting information to clients, who

are only within a certain physical location (blackout) (see page 1), and Schneier teaches broadcasting a key (see page 523), therefore the combination teaches transmitting and receiving a decryption key. Applicant further challenged Examiner's use of Official Notice, as seen in the printout from FOLDOC a transducer converts and electrical signal into sound, i.e. makes an electrical signal hearable. Applicant also argues the inherency claimed by Examiner, that the CNN system must determine an approximate physical location of a requestor. This must be the case because in order to perform a blackout (the stopping of local broadcasts to ensure ticket sales to the sporting event) the system has to know that the requestor is not in the physical location being blacked out. The concept of a blackout also covers Applicant's argument with respect to not sending the data if not within a certain location.

Regarding Applicant's argument that there is no motivation to combine CNN and Schneier as cited above Schneier is used to distribute a key to certain users so they can obtain information and no one else can, CNN teaches blacking out games so only certain people can view the web cast, therefore the motivation is to only allow the certain users to have the key.

Regarding Applicant's argument that there is no motivation to combine CNN, Schneier, and Schlossberg the motivation to

combine Schlossberg with Pezzillo and Glick would have been to determine the physical location of a device on the Internet (see paragraph 54).

***Conclusion***

11. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Pyzocha whose telephone number is (571) 272-3875. The examiner can normally be reached on 7:00am - 4:30pm first Fridays of the bi-week off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Emmanuel Moise can be reached on (571) 272-3865. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

MJP

E. Moise

EMMANUEL L. MOISE
SUPERVISORY PATENT EXAMINER